

LINDA LINGLE
GOVERNOR

JAMES R. AIONA, JR.
LIEUTENANT GOVERNOR

STATE OF HAWAII
OFFICE OF THE LIEUTENANT GOVERNOR
OFFICE OF INFORMATION PRACTICES

NO. 1 CAPITOL DISTRICT BUILDING
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LESLIE H. KONDO
DIRECTOR

February 8, 2006

VIA E-MAIL

Ms. Michelle S. Matson
Diamond Head/Kapahulu/St. Louis Heights
Neighborhood Board No. 5

Re: Neighborhood Board Meeting Minutes (S RFO-G 05-60)

Dear Ms. Matson:

By letter dated December 15, 2005, you raised a number of issues relating to the minutes that are required to be maintained by the Neighborhood Board. More specifically, as we understand your letter, you ask: (1) whether the minutes must be approved by the Board; (2) whether the minutes of the meeting at which the minutes of a previous meeting are approved must reflect any amendments to those minutes; and (3) whether the Board must incorporate additional information in the minutes of a prior meeting upon request.¹

A. Approval of Minutes

The Sunshine Law does not require a board to approve minutes of prior meetings. It requires that the minutes "give a true reflection of the matters discussed at the meeting and the views of the participants" and contain certain specified information, including "the substance of all matters proposed, discussed, or decided; and a record, by individual member, of any votes taken[.]" Haw. Rev. Stat. § 92-9(a) (1993).

We are aware that most boards do approve the minutes of prior meetings. While not mandated under the Sunshine Law, approval of minutes may serve to

¹ We also received and have reviewed the additional information that was transmitted by facsimile on January 9, 2006 and e-mail on January 20, 2006.

ensure that the minutes comply with section 92-9(a), i.e., that they are a “true reflection” of the matters discussed at the meeting and include the required information. Ultimately, it is the board’s responsibility to ensure that the minutes comply with the statutory requirements.

B. Corrections or Amendments to Minutes

To satisfy the statutory requirement that the minutes accurately reflect the substance of the meeting, we believe that the minutes must reflect any correction or amendment that the board deems necessary and/or appropriate. That, however, does not mean that the minutes must be redrafted to include the corrections and amendments; rather, in our opinion, as long as the minutes clearly reflect that there has been a correction or amendment, the correction or amendment can be by way of an attachment to the minutes. The attachment must clearly indicate the portion of the minutes being corrected or amended and must be physically affixed to the minutes. For instance, in lieu of redrafting the original to include the corrections and amendments to those minutes, we understand that certain boards note on the original version of the minutes that the minutes have been corrected or amended, and attach a separate document to those minutes that reflects the correction or amendment.

If a board approves the minutes of prior meetings, the minutes of the meeting at which the board does so must reflect such action, including any amendments or corrections to those minutes generally described.

C. Incorporation of Additional Information

The board need not incorporate additional information in the minutes upon request by a board member. Section 92-9(a)(4) requires that the minutes include “any other information that any member of the board requests be included or reflected in the minutes.” However, we interpret that provision to mean that the board must include information that a board member requests be included or reflected in the minutes during the meeting. We do not interpret the statute to allow a board member, after the meeting, to demand that certain information be included in the minutes.²

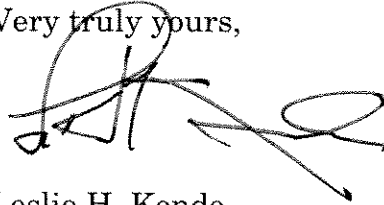
We trust that the above responds to the questions raised by your letter. Because your questions may be common to other neighborhood boards, we are

² Clearly, section 92-9(a)(4) is not a means by which a board member may add information to the minutes that was not actually discussed or otherwise presented at the meeting.

Ms. Michelle S. Matson
February 8, 2006
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copying Ms. Joan A. Manke on this response. If you or Ms. Manke have any questions or would like to discuss this matter, please feel free to contact us.

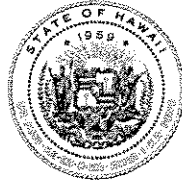
Very truly yours,

A handwritten signature in black ink, appearing to be 'LH Kondo', with a long, sweeping horizontal stroke extending to the right.

Leslie H. Kondo
Director

LHK: nkb

cc: The Honorable Joan A. Manke (via e-mail)
Neighborhood Board Chairs
c/o Neighborhood Commission (via e-mail)



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LESLIE H. KONDO
DIRECTOR

March 30, 2006

VIA E-MAIL

Ms. Melissa Graffigna
Chair, Mililani Mauka/Launani Valley
Neighborhood Board No. 35
c/o Neighborhood Commission

VIA E-MAIL

Mr. Dick Poirier
Chair, Mililani/Waipio/Melemanu
Neighborhood Board No. 25
c/o Neighborhood Commission

Re: Community Public Forum

Dear Ms. Graffigna and Mr. Poirier:

We are informed that the Mililani Mauka/Launani Valley Neighborhood Board ("Board No. 35") and the Mililani/Waipio/Melemanu Neighborhood Board ("Board No. 25") are intending to hold a "Community Public Forum" on Tuesday, April 4, 2006. We have been provided a copy of the Notice filed by Board No. 35 on March 28, 2006. We assume that Board No. 25 filed an identical or substantially similar notice.

As you should know, absent a permitted interaction or other exception, the Sunshine Law prohibits board members from privately discussing, deliberating or deciding board business.¹ See, e.g., OIP Op. Ltr. No. 05-15 at 4. In other words,

¹ We define board business as "matter[s] over which . . . [the] board has supervision, control, jurisdiction, or advisory power" that are before the board or reasonably anticipated to come before the board in the foreseeable future. See OIP Op. Ltr. No. 04-01.

Ms. Melissa Graffigna
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board members generally cannot discuss with each other matters that are board business outside of a properly noticed meeting of the board. You should also know that, for every meeting, a board must file a notice and agenda, with the agenda specifically describing the matters that the board intends to discuss, deliberate or decide. Haw. Rev. Stat. § 92-7(a) (Supp. 2005). The agenda must provide sufficient detail to allow the public to reasonably understand what matters the board intends to consider at the meeting. OIP Op. Ltr. No. 03-22 at 6. Moreover, the board cannot discuss, deliberate or decide board business that is not listed on its agenda.

With respect to the Community Public Forum, we are unaware of any applicable permitted interaction or other exception that would allow the members of Board No. 35 and Board No. 25 to discuss their respective board's business outside of a properly noticed meeting. We, therefore, assume that Board No. 35 and Board No. 25 intend the Community Public Forum to be a joint meeting of both boards. We further assume that the Notice filed by Board No. 35, and presumably by Board No. 25, was intended to be the notice and agenda required by section 92-7(a), Hawaii Revised Statutes.

In our opinion, the Notice does not comply with the agenda requirements of the statute. More specifically, with respect to items 2, 3 and 4, the Notice is too vague and provides insufficient information from which the public can reasonably understand the specific matter that the boards intend to consider. Moreover, because the statute requires that a board limit its discussions, deliberations and decisions to matters listed on its agenda, a board generally should not include agenda items such "Community Discussion." Although that agenda item may allow the public to express its concerns about matters not on the agenda, where the matter is reasonably likely to be considered by the board in the foreseeable future, the board members cannot discuss the issues with the public or with each other as part of this meeting.

For the reason stated above, it is our opinion that items 2, 3 and 4 cannot be discussed, deliberated or decided by either Board No. 35 or Board No. 25 as part of the Community Public Forum on April 4 and should be cancelled from the agenda. We strongly recommend that Board No. 35 and Board No. 25 make reasonable efforts to immediately notify the public that those items will not be considered by the boards as part of the Community Public Forum. Such efforts should include contacting those persons to whom the Notice was mailed, e-mailed or otherwise delivered as well as posting notice of the cancellation of items 2, 3 and 4 at those locations where the Notice may have been posted.

Lastly, we are compelled to comment on item 1, "Background and Update of the Central Oahu Sustainable Communities Plan - Doug Thomas." We understand that the boards may be intending to discuss a resolution or resolutions relating to

Ms. Melissa Graffigna
Mr. Mr. Dick Poirier
March 30, 2006
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the Central Oahu Sustainable Communities Plan and/or other development issues as part of the Community Public Forum. We do not believe that the item, as described in the Notice, is sufficiently broad to include consideration of any resolution. The Notice, as written, reflects that the boards intend to provide the community with the background of the Central Oahu Sustainable Communities Plan and to update the community on the Central Oahu Sustainable Communities Plan. The Notice, however, provides no reasonable indication that the boards intend to take any action, including the consideration of any resolution, concerning the Central Oahu Sustainable Communities Plan.

In summary and to avoid any misunderstanding, as the agency charged with administering and interpreting the Sunshine Law, it is our opinion that Board No. 35 and Board No. 25 cannot discuss, deliberate or decide items 2, 3 and 4 as part of the Notice for the Community Public Forum to be held on April 4. By copy of this letter to the Neighborhood Commission and the Department of the Corporation Counsel, we are advising them of our opinion.

If you have questions or would like to discuss this matter, please contact us.

Very truly yours,



Leslie H. Kondo
Director

cc: Members, Mililani Mauka/Launani Valley
Neighborhood Board No. 35
(c/o Neighborhood Commission) (via e-mail)
Members, Mililani/Waipio/Melemanu
Neighborhood Board No. 25
(c/o Neighborhood Commission) (via e-mail)
Ms. Joan Manke (via e-mail)
Ms. Clara Y. Ching (via e-mail)
Mr. Edward E. Gall (via e-mail)
Mr. Bernard L. Kaahanui (via e-mail)
Ms. Jeanette C. Nekota (via e-mail)
Ms. Kalene Shim-Sakamoto (via e-mail)
Mr. Roy Wickramaratna (via e-mail)
Ms. Sylvia K.G. Young (via e-mail)
Jennifer D. Waihee, Esq. (via facsimile)



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LESLIE H. KONDO
DIRECTOR

April 4, 2006

VIA E-MAIL

Ms. Melissa Graffigna
Chair, Mililani Mauka/Launani Valley
Neighborhood Board No. 35

Re: Community Public Forum

Dear Ms. Graffigna:

You asked that we memorialize certain guidance provided to you orally concerning the Community Public Forum scheduled for Tuesday, April 4, 2006. As explained in our earlier letter to you and Mr. Dick Poirier, Chair of the Mililani/Waipio/Melemanu Neighborhood Board No. 25, in our opinion, the agenda for the Forum¹ as it relates to agenda items 2, 3 and 4 is inadequate and does not satisfy the requirements of the Sunshine Law.² For that reason, we advised you and Mr. Poirier that your respective boards cannot discuss, deliberate or decide items 2, 3 and 4 as part of the Forum to be held on April 4.³

¹ As noted in our earlier letter, absent a permitted interaction or other exception, board members can discuss, deliberate and decide business of their board only at a properly noticed meeting. We, therefore, consider the Forum to be a meeting for purposes of the Sunshine Law.

² We assume that Board No. 25 has filed a notice and agenda for the Forum, similar to the notice and agenda filed by Board No. 35. If Board No. 25 has not filed a notice or agenda for the Forum, assuming that the Forum will involve matters that are Board No. 25's business, members of that board should not participate in the Forum absent a permitted interaction or other applicable exception.

³ We believe that the agenda is sufficient to allow Board No. 35 and Board No. 25 to consider information about the Central Oahu Sustainable Communities Plan. As we mentioned in our letter, the agenda description, however, does not allow the boards to consider any action, like a resolution, relating to the Central Oahu Sustainable Communities Plan.

You indicated that agenda items 2 and 3, “Hawaii Kai issue” and “Central Oahu issue,” respectively, are intended to allow the boards and the community to hear about development issues in Hawaii Kai and the Sierra Club’s position regarding issues involving Central Oahu. According to you, neither the “Hawaii Kai issue” nor the “Central Oahu issue” is a matter over which Board No. 35 has supervision, control, jurisdiction, or advisory power. From your representations, it does not appear that either the “Hawaii Kai issue” or the “Central Oahu issue” relate to business of Board No. 35. Assuming that to be true, i.e., the issues are not “board business,”⁴ the Sunshine Law does not restrict or otherwise apply to the discussions between board members about those matters. In other words, board members can discuss those issues outside of a meeting without limitation or other restriction.

Although the “Hawaii Kai issue” and the “Central Oahu issue” do not appear to be board business, to avoid any issue relating to the boards’ consideration of those matters, we suggest two alternatives that may allow the boards and the community to receive the information from Ms. Reilly and Mr. Mikulina. One suggestion is that the boards delete items 2 and 3 from the agenda for the Forum and, after the boards adjourn the Forum, Ms. Reilly and Mr. Mikulina be allowed to address the audience, including the board members. The second suggestion is that the boards amend the agenda to more specifically describe the issues that Ms. Reilly and Mr. Mikulina intend to address.⁵ We, however, strongly remind and caution you that the boards cannot discuss matters raised by either Ms. Reilly or Mr. Mikulina in the context of or as they relate to matters involving the Mililani community that are business of Board No. 35 or Board No. 25.

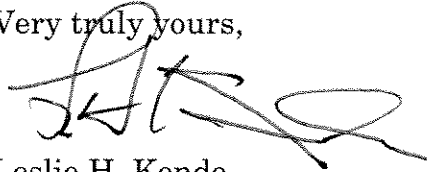
⁴ “Board business” are “matters over which . . . [the] board has supervision, control, jurisdiction, or advisory power” that are before the board or reasonably anticipated to come before the board in the foreseeable future. See OIP Op. Ltr. No. 04-01.

⁵ To amend the agenda, two-thirds of the board members to which the board is entitled must vote to do so and the matter added to the agenda cannot be of reasonably major importance and action by the board cannot affect a significant number of persons. Haw. Rev. Stat. § 92-7(d) (Supp. 2005). Because the issues do not appear to be “board business,” we do not believe that either is of reasonably major importance to the Mililani community or that any action taken by either board would affect a significant number of people.

Ms. Melissa Graffigna, Chair
April 4, 2006
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If you have any questions or would like to discuss any of the issues further,
please contact us.

Very truly yours,

A handwritten signature in black ink, appearing to read 'L. Kondo', with a stylized flourish extending to the right.

Leslie H. Kondo
Director

cc: Members, Mililani Mauka/Launani Valley
Neighborhood Board No. 35,
(c/o Neighborhood Commission) (via e-mail)
Mr. Dick Poirier, Mililani/Waipio/Melemanu
Neighborhood Board No. 25,
(c/o Neighborhood Commission) (via e-mail)
Members, Mililani/Waipio/Melemanu
Neighborhood Board No. 25,
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Ms. Clara Y. Ching (via e-mail)
Mr. Edward E. Gall (via e-mail)
Mr. Bernard L. Kaahanui (via e-mail)
Ms. Jeanette C. Nekota (via e-mail)
Ms. Kalene Shim-Sakamoto (via e-mail)
Mr. Roy Wickramaratna (via e-mail)
Ms. Sylvia K.G. Young (via e-mail)
Jennifer D. Waihee, Esq. (via facsimile)